IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 33811 of 2007(A)

OS.265/2000 of M.C.,ERNAKULAM

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PETITIONER:

SUGATHAN, S/O. PAPPAN,
VELIAPARAMBIL HOUSE, MULAVUKADU VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENTS:

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1. TONY PAIVA, AGED 37,
S/O. ANDREW SUNNY PAIVA, RESIDING AT
PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION,
CHITTOOR ROAD, KOCHI-18.

2. JOSEPH PAIVA ALIAS CIRIL, AGED 37,
S/O. ANDREW SUNNY PAIVA, RESIDING AT
PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION,
CHITTOOR ROAD, KOCHI-18.

3. MRS. FRANCINA MERNANDEZ ALIAS VOLGA,
AGED 32, W/O. ANTONY FERNANDEZ, RESIDING AT
PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION,
CHITTOOR ROAD, KOCHI-18.

4. ANTONY GALDEN PAIVA, AGED 32,
S/O. ANDREW SUNNY PAIVA, RESIDING AT
PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION,
CHITTOOR ROAD, KOCHI-18.

5. WALTERIN EDVIN PAIVA ALIAS EDISON,
AGED 32, S/O. ANDREW SUNNY PAIVA, RESIDING AT
PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION,
CHITTOOR ROAD, KOCHI-18.

6. DOMINIC JOHN, AGED 60,
S/O. ROCKEY, KAIPPILLY HOUSE, VALLARPADOM DESOM,
MULAVAKADU VILLAGE, ERNAKULAM.

7. JOSEPH FRANKLIN, AGED 43,
S/O. ROCKEY, RESIDING AT MADATHUNATTU HOUSE,
LIG 125, GCDA, KOOVAPPADAM, KOCHI-2.

8. JOSEPH IMMANUEAL PINTO ALIAS JAIMY,
AGED 53, S/O. ROCKEY, DOOR NO.26/1137,
ST.JOSEPH CHURCH ROAD, THEVARA, SALMIYA MAIN P.O.,
KUWAIT.

9. VINCY JOSEPH, AGED 50,
D/O. ROCKEY, KALLUVEETTIL HOUSE, NAZRETH,KOCHI-2.

BY ADV. SRI.K.C.CHARLES
SRI.K.C.CHARLES
SRI.T.LAKSHMI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of EA 904/07 in EP 474/06 in OS 265/2000 pending on the files of the Hon'ble Munsiff's Court, Ernakulam.

Ext.P2 true copy of EA 905/07 in EP 474/06 in OS 265/2000 pending on the files of the Hon'ble Munsiff's Court, Ernakulam.

Ext.P3 true copy of the plaint in OS 265/2000

Ext.P4 true copy of the Commissioner's report dated 8.6.2000.

Ext.P5 true copy of the written statement filed by the 2nd defendant in OS 265/00

Ext.P6. true copy of the written statement in OS 265/2000 preferred by the 4th defendant.

Ext.P7 true copy of the Commission report dated 23.6.2005.

Ext.P8 true copy of the objection filed by the 1st defendant to Ext.P7 report.

Ext.P9 true copy of IA 7755 of 2005 in OS 265 of 2000.

Ext.P10 true copy of the objection filed by 1st defendant to Ext.P9.

Ext.P11 true copy of the application preferred by the 1st defendant for setting aside the commission report marked above as Ext.P7.

Ext.P12 true copy of the order dt.23.11.2005 in OS 265/2000.

Ext.P13 true copy of the judgment dated 19.7.2007 in WP(C) No.21661/07

M.N.Krishnan, J.

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W.P(C).No.33811 of 2007

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Dated this the 20th day of November, 2007.

JUDGMENT

This Writ Petition is preferred with a direction to this Court to stay all further proceedings in pursuant to the order dated 3.11.2007 in E.A.Nos. 904 and 905 of 2007 in so far as it directs the Amin to effect delivery of the building situated in plot B of the plaint schedule property.

2. The writ petitioner is the fourth defendant in the case. He filed a written statement. When the case was taken up, it was not prosecuted and ultimately in spite of repeated adjournments the court below was forced to pass an ex parte decree and as per the decree a direction is given to the fourth defendant to vacate the shed in the plaint schedule property within one month from 23.11.2005 failing which the plaintiffs are permitted to execute the decree as against him. Learned counsel for the respondents would submit that even in the suit an ex parte order is passed against the fourth defendant and the court was pleased to set aside those orders and receive his written statement.

3. The writ petitioner - fourth defendant has not moved application for setting aside the ex parte decree till filing of the Writ Petition. Subsequent to the same, he has filed an application. Now the decree sought to be executed is of

23.11.2005 and for almost one year the fourth defendant has kept silent. In order to enable a party to obtain stay and for the said purpose his act of filing an application to set aside the ex parte decree cannot be viewed as a bonafide one. If ultimately the fourth defendant succeeds in setting aside the ex parte decree in his favour then there are sufficient provisions in the C.P.C. which enables the party to get restitution of the property, which can be done by the court that passes the orders.

4. So at this stage, I do not want to interfere with the findings rendered by the court below and therefore the Writ Petition is dismissed. The Executing Court may fix a fresh date for delivery immediately and then depute the Amin for delivery of the property. In order to enable the writ petitioner to approach the court where he has filed an application to set aside the ex parte decree, the court below is directed not to deliver the property till 30.11.2007 and on that date, it may fix the date.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 20/11